IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2006

CORAM

THE HONOURABLE MR.JUSTICE P. SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S. TAMILVANAN

T.C. (Appeal) No.2597 of 2006
AND TMP.No.1 of 2006

....

Dr. K.J. Yesudass ... Appellant.

vs.

The Assistant Commissioner of Income-tax,
Media Circle II, Chennai. ... Respondent.

T.C. Appeal filed U/S 260 A of the IT Act, 1961 against the order of the Income-tax Appellate Tribunal, Bench-A, Chennai dated 30.11.2005 made in ITA. No.971/Mds/2004, for the assessment year 1993-94. (ITA No.06/03-04 dated 5.2.2004 on the file of the Commissioner of Income Tax (Appeals) VI, Chennai-34 against GIR & P.A. No.10701-Y dated 28.3.2003 on the file of the Assistant Commissioner of Income Tax, Media Circle II, Chennai-34).

For appellant : Mr. K. Venkatraman for
M/s.Subbaraya Aiyar & Ramamani

....

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

This tax case appeal is directed against the order of the Income-tax Appellate Tribunal, Bench-A, Chennai dated 30.11.2005 made in ITA No.971/Mds/2004 for the assessment year 1993-94.

2. After hearing both sides and on perusing the records, the appellate Tribunal, after finding that whether the goods or merchandise were crossed the frontiers so as to effect the completion of export out of India is not clear from the records, in order to come to a correct conclusion that there was completion of export, on satisfying itself, remitted the matter back to the Assessing Officer, who in turn will decide the issue in accordance with law. In support of the above conclusion, the Tribunal relied on the decision of the

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Bombay High Court in the case of Abdulgafar A. Nadiawala vs. ACIT & Others reported in 267 ITR 488. No doubt, the learned counsel for the appellant submitted that the decision of the Bombay High Court is under challenge before the Supreme Court and the Special Leave Petition is pending.

3. It is not in dispute that as on date the decision of the Bombay High Courte cited supra holds the field. Even otherwise, in view of the categorical conclusion held by the Appellate Tribunal that, whether the goods or merchandise were crossed the frontiers as to the effect the completion of export out of India is not clear from the records, it is desirable and in the interest of both parties to consider the said aspect afresh by the Assessing Officer, we are in agreement with the said conclusion. Hence, we find no substantial question of law to entertain the above appeal and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh.

To

1.The Assistant Registrar,
Income -Tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai 90

2.The Commissioner of Income-Tax,
(Appeals) VI Chennai-34.

3.The Assistant Commissioner of Income-Tax,
Media Circle II, Chennai-34.

+1cc to M/s. Subbaraya Aiyar Padmanabhan Advocate Sr 53427

JRG (CO)
km/29.11.

T.C.No.2597 of 2006

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